

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, March 3, 2009
Time: 6:30 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Livengood called the meeting to order at 6:30 PM.

PRESENT: Mayor Livengood, Vice Mayor McHugh, Councilmembers Giordano, Gomez and Polanski

ABSENT: None

CLOSED SESSION

Mayor Livengood stated the City Council would convene to Closed Session to discuss labor negotiations with employee groups: Milpitas Police Officers Association (MPOA), and International Association of Firefighters (IAFF).

City Council convened in Open Session at 7:00 PM.

CLOSED SESSION ANNOUNCEMENT

City Attorney Mike Ogaz announced that the City Council authorized a settlement in the amount of \$60,000 in the litigation case of Palladini v. City of Milpitas.

PLEDGE

Boy Scouts Troop No. 92 presented the colors and led all in the Pledge of Allegiance.

Mayor Livengood asked all present, including several Milpitas Firefighters, for a moment of silence to honor and remember firefighter Jerry Furman, who retired from Milpitas Fire Department in 2001 after 20 years service to the City. He had passed away on this date.

MINUTES

Motion: to approve the City Council meeting minutes of February 17, 2009

Motion/Second: Councilmember Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meetings for March 2009, as amended

City Manager Williams noted the location of the joint Schools/City meeting was to be held at City Hall on Wednesday, March 4 (not as noted on the calendar).

Councilmember Giordano noted that the Terrace Gardens Board of Directors meeting would be held every other month, and asked to delete the meeting noted for March.

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATIONS

Mayor Livengood noted that the first proclamation he prepared to present would be delivered to Ms. Demetress Morris, for Black History Month, as she was unable to attend in person.

Mayor Livengood next honored the City's Parks, Recreation and Cultural Resources Commission upon being chosen as the Commission of the Year statewide in California. The proclamation was given to PRCRC Chair Steve Munzel. He thanked the City Council for the proclamation, and noted the contributions to the Commission of Frances Krommenhock, Ray Serena, Henry Koo, and former Commissioners Robert Burrill, in particular.

PUBLIC FORUM

Alvin White, God's Brain, Milpitas resident, would put a temporary life center in the old library area, as a Bump on Veterans Park in Milpitas.

A man, resident on Sepulveda, discussed the garden park in his neighborhood, noted the City had put a "Yield" instead of "Stop" signs, and the curb was painted red. Finally, he wanted cooperation from people in this City.

Paul Muller, of Roadrunner Glass, informed the Council of the fantastic job on the construction of the new library and the entire layout. It was phenomenal and extremely busy with patrons. The only observation he had was that it was missing a park, with some kind of outdoor sitting area, which would be a good addition.

Mayor Livengood responded that perhaps the City could have a look at that park issue. He also acknowledged the good work Mr. Muller's company had done when the matter of the location of the historic fire truck in the Library parking garage was discussed last year.

Isaac Hughes, Milpitas resident, reported on the City website recently praised by the Mayor. He complained about how to print documents from the City website, though staff tried to help him. He felt there was a conflict of interest on one item, urged Mayor Livengood to follow the law, and further complained about materials in the Council's agenda packet. He stated the City Clerk did not provide a public binder of agenda packet materials, and the Mayor asked staff to check on that.

ANNOUNCEMENTS

Vice Mayor McHugh asked to adjourn the meeting in memory of Ms. May Ferraro, as she was a vibrant, active San Jose resident, who had passed away recently. Mayor Livengood agreed.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Vice Mayor McHugh requested Item No. 12 to come off consent, upon the request of a resident. Councilmember Gomez asked for Item No. 3 to go onto the consent calendar. Vice Mayor McHugh asked for Item No 4 to go onto the consent calendar.

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

* 3. Request for Funds for
Milpitas Kiwanis

Authorized a donation in the amount of \$1,500 to the Milpitas Kiwanis for the Kohl's Cares for Kids Event in August 2009 at the Great Mall, funded from the Council's unallocated Community Promotions budget.

* 4. Regarding Milpitas seat on
the VTA M-G-M Group

Approved Mayor Livengood's recommendation to appoint Vice Mayor McHugh as the City of Milpitas representative to Santa Clara Valley Transportation Authority's Milpitas-Gilroy-Morgan Hill group.

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| * 5. Community Advisory Commission 2009 Workplan | Approved the Community Advisory Commission 2009 Work Plan. |
| * 6. Parks, Recreation and Cultural Resources Work Plan | Approved the Parks, Recreation and Cultural Resources Commission 2009 Work Plan. |
| * 7. Fee Waivers for 2009 Relay for Life event | Approved the American Cancer Society's Milpitas Relay for Life fee waivers and in-kind donation of equipment, supplies and staffing totaling \$3,724 for the June 19-20, 2009 Relay for Life event at the Milpitas Sports Center. |
| * 10. Resolution Memorializing Appointments to Regional Commissions and Agencies | Adopted Resolution No. 7842 memorializing appointments to certain regional commissions and agencies, including the Santa Clara Valley Water Commission and the Bay Area Water Supply and Conservation Agency. |
| * 11. Resolution Authorizing the Reduction of Bond for Paragon | Adopted Resolution No. 7843 authorizing the reduction of the faithful performance bond in penal sum of the subdivision improvements by Western Pacific Housing Inc's Paragon development, Tract 9775, Private Job No. 3204. |
| * 13. Approve Pre-Qualified Bidders List, Project No. 7101 | Approved the pre-qualified bidders list; approved the plans and specifications for Project No. 7101; and, authorized advertisement for bid proposals from pre-qualified bidders. |

- ## 1. Appeal of Planning Commission Approval of Tobacco Shop - Continue

Mayor Livengood requested to have more information in the agenda packet about the appeal, including the original report to the Planning Commission.

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Councilmember Giordano had stepped away from the dais for a few minutes prior to, and at the time of, the vote on this matter and returned shortly thereafter.

The Draft Environmental Impact Report for the project was circulated last fall. Some mitigations were proposed to effect significant impacts. Also, the original McCarthy Ranch Development Agreement needed to be amended. Mr. Ah Sing lastly discussed traffic impacts of the Campus project, briefly.

There were no additional speakers from the audience.

(1) Motion: move to close the public hearing

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

City Attorney Mike Ogaz read aloud the title of Ordinance No. 38.787 "An Ordinance of the City Council of the City of Milpitas Amending the McCarthy Ranch Development Agreement for the Campus at McCarthy Ranch Project Located at 205 North McCarthy Boulevard."

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.787

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5
NOES: 0

(3) Motion: to introduce Ordinance No. 38.787

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5
NOES: 0

(4) Motion: adopt Resolution No. 7839 certifying the Environmental Impact Report (EA 08-004) for the Campus at McCarthy Ranch project

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

(5) Motion: adopt Resolution No. 7840 approving the Campus at McCarthy Ranch, including action on the Major Tentative Map, Site Development Permit, and Conditional Use Permits

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5
NOES: 0

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA 1. CALL TO ORDER

Mayor/Agency Chair Livengood called to order the regular meeting of the Milpitas Redevelopment meeting jointly with the City Council, at 7:36 PM.

ROLL CALL

PRESENT: Chair/Mayor Livengood, Vice Chair/Vice Mayor McHugh, Agency/Councilmembers Giordano, Gomez and Polanski

ABSENT: None

RA 2. MINUTES

Motion: to approve the meeting minutes of the Redevelopment Agency meeting of February 17, 2009

Motion/Second: Agency/Councilmember Polanski/ Agency/Councilmember Giordano

Motion carried by a vote of:

AYES: 5
NOES: 0

RA 3. Agenda Approval and
Consent Calendar

Motion: to approve the agenda and consent calendar items (*), as submitted

Motion/Second: Agency/Councilmember Giordano/ Agency/Councilmember Polanski

Motion carried by a vote of:

AYES: 5
NOES: 0

RA 4. Application for Federal
Stimulus Program funds

City Engineer Greg Armendariz reviewed the status of federal funding opportunities that the City of Milpitas would pursue including federal stimulus funds, American Recovery and Reinvestment Act funds, STIP grants, and others including the State Drinking Water Revolving Loan Program and other water funding programs, and Department of Energy funds for solar panels possibly. He next discussed elements of the South Park Victoria Drive street repaving project, prepared to be done in the spring.

Councilmember Gomez asked staff about funds, and what about money that passed through the state (Caltrans). Mr. Armendariz responded that it was all earmarked and the City had no problems in the past with receipt of funds received from the state.

Motion: to receive the staff report on Federal Economic Stimulus Program for city infrastructure; and, adopt Resolution No. RA 324 authorizing staff to file an application for American Recovery and Reinvestment Act funding for the South Park Victoria Drive Street Pavement Rehabilitation Project No. 8194.

Motion/Second: Vice Chair/Vice Mayor McHugh / Agency/Councilmember Giordano

Motion carried by a vote of:

AYES: 5
NOES: 0

RA 5. Senior Center Project
Award of Bid

City Engineer Greg Armendariz described the new Senior Center project, the next steps, and reviewed the design drawings for the old library to become the new facility with a total of 21,795 square feet.

He reviewed the January 27, 2009 bid opening of eight bids received for the project. He reviewed the outcome and provided rationale for why staff determined that the apparent low bidder did not comply with all requirements of the bid. \$6,579,031 was the bid amount from Swenson, including the four add alternate items (which totaled \$40,500).

Mayor Livengood asked the engineer's estimate (\$9,851,986) and noted the savings of nearly \$3 million in the bid versus the estimate. The Mayor inquired if the project would qualify for federal stimulus package funding. Mr. Armendariz said he did not believe so, since this project was only at the bid award stage.

Councilmember Gomez commented that in fact there were no real "savings" until the project was built, with which staff concurred.

Councilmember Giordano asked when a bid came in and the total amount was done correctly, and when it seemed only minor things were not right, would a bidder get the chance to correct errors. Staff responded no. Minor irregularities construed could be waived by the City Council, but in this case there were three of those.

Councilmember Polanski noted that the Council/Agency was not required to accept the low bid and could accept the lowest responsible bidder. Staff confirmed that the City looked for the responsive and responsible bidder. She was very pleased with how staff was going about the project. It was especially nice to find a project that would start out costing less than the City thought it would.

Attorney and the City Clerk. He discussed the open government ordinance as the people's business.

Next, Vice Mayor McHugh suggested the Council consider approval of those items that were not controversial first: items 1, 2, 3, 5, 8, 9, 10, 11, 12, 13, 14, and 15 on the list provided by the City Attorney, leaving for discussion items no. 4, 6, 7, 16, and 17.

Councilmember Polanski said she had no problem proceeding as the Vice Mayor suggested. She reminded the Council that she was not supportive when the ordinance first came forward and she had always believed in transparency in government.

Councilmember Giordano would not support the motion by the Vice Mayor.

The Mayor then quickly went through the list with the City Council to find where there was agreement on the proposed change items.

Mayor Livengood summarized agreement as follows:

1. all ok, 2. no agreement, 3. no agreement, 4. stay as is, 5. all ok, 6. hold, 7. hold, 8. all ok, 9. all ok, 10. as is for now, 11. discuss, 12. discuss, 13. discuss, 14. no agree, 15. all ok, 16. hold off, and 17. no agreement.

The City Council next reviewed and voted on all matters as noted.

(1) Motion : to authorize inclusion of Items No. 1, 5, 8, 9, and 15 in the amended Open Government ordinance, as recommended by the Rules Committee

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to authorize inclusion of Item No. 2 (post Preliminary agenda 6 days) in the amended Open Government ordinance, as recommended by the Rules Committee

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 1 (Giordano)

(3) Motion: to authorize inclusion of Item No. 3 (eliminate bridge line requirement) in the amended Open Government ordinance, as recommended by the Rules Committee

Motion/Second: Vice Mayor McHugh/Councilmember Gomez

Motion carried by a vote of: AYES: 4
NOES: 1 (Giordano)

Additional discussion was held on Item 4, regarding the posting of City Council members' appointment calendars online.

Councilmember Gomez noted that the Rules Committee did not make a specific recommendation. He felt more rules should define what goes onto that calendar (it was very open), and to narrow it down to City business.

Councilmember Polanski believed that online calendars for City Council was appropriate but not for the City Manager and Planning Commissioners. It was good for Council and she did not put any social events on the calendar.

Vice Mayor McHugh felt it was inconvenient, but involved some merit, should be well defined for any appointments with potential business with the City, and include the City Manager and Planning Commissioners.

(4) Motion: to maintain the requirement for City Council appointment calendars online, as it already existed in the ordinance (delete Item No. 4 from list)

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 3
NOES: 2 (Gomez, Polanski)

Councilmember Polanski commented that she wanted to have separate calendars for each Councilmember online. Mayor Livengood asked to bring that specific request back to the Council with also defining what meetings go on the posted calendar.

(6) Motion: to require Item No. 6 (provide yearly tally of Public Records requests) to be discussed in further detail at the Rules Committee level, and return to Council with a recommendation with further scoping from staff, along with Item No. 7 (prepare a records index)

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(7) Motion: to move to follow the Brown Act specifically, and to include Item No. 10 (delete requirement to audiorecord Closed Sessions) to keep Closed Session discussions confidential

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano, Livengood)

On Item No. 11, Councilmember Gomez first made a motion but no second was heard.

Councilmember Polanski asked for clarification on the rule to vote regarding closed session items. City Attorney Ogaz described several exceptions for closed session items, where the Open Government Ordinance required a motion in Open Session to waive the attorney-client privilege to discuss an item, e.g. pending litigation in open session. Mr. Ogaz suggested solely following the Brown Act.

(8) Motion: to include Item No. 11 (delete requirement for vote to assert privilege to discuss) in the revised amended Ordinance

Motion/Second: Councilmember Gomez/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 1 (Giordano)

(9) Motion: to delete Item No. 12 (delete the requirement vote to disclose all or a portion of Closed Session) from the list for the revised amended Ordinance, and thus to maintain the law as is

Motion/Second: Councilmember Gomez/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

(10) Motion: to include Item No. 13 (revert to Brown Act on written settlement agreement availability) in the revised amended Ordinance

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(11) Motion: to include Item No. 14 (delete public senior staff meetings requirement) in the revised amended Ordinance

Motion/Second: Councilmember Gomez/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 1 (Giordano)

Motion: to delete Item No. 16 (to maintain the call for an annual list of sole source contracts and RFPs) from the list in the revised amended Ordinance

Motion/Second: Vice Mayor McHugh/Mayor Livengood

Before she could decide on this issue, Councilmember Polanski asked for the scope of this requirement as is, to find out what it takes and send it back to Rules Committee.

No vote was taken on the motion above, as Vice Mayor McHugh removed his prior motion to allow for a substitute motion.

(12) Motion: on Item No. 16, send this matter back to the Rules Committee, to study and discover what was the scope of this report from staff, and report back to Council

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5
NOES: 0

(13) Motion: to amend Item No. 17 to maintain the requirement for all City Council, Planning Commission, and Senior Management staff Forms 700 be posted on the City's website (omit other filers from web posting) – to include it in the Ordinance

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano, Livengood)

Councilmember Polanski did note that on the Form 700, a filer can provide the place of business address on the form (rather than home address). She urged this to be provided in instructions to senior staff filers.

At the conclusion of this discussion, Mayor Livengood summed up what next steps on Open Government ordinance were: send three items back to Rules Committee, report back to the Council, and then the ordinance can be brought back to the full Council.

RESOLUTION

Two resolutions were adopted on the consent calendar.

9. Approving Memorandum of Understanding with ProTech Employee Group

Human Resources Director Carmen Valdez summed up the terms of the proposed Memorandum of Understanding with the ProTech employees group. \$828,000 was the estimated cost of the document over three years, for the period July 1, 2008 to June 30, 2011. A draft copy of the MOU was available for review for 15 days as required by the

Open Government ordinance. Ms. Valdez requested the City Council to adopt a resolution approving the new contract.

Mayor Livengood asked if there were any members of the audience who wanted to speak to the City Council on this matter.

Speaker:

Isaac Hughes would like to know who from the City staff negotiated these types of contracts, and asked about who specifically were the staff negotiators.

Mayor Livengood asked the City Manager to respond. Mr. Williams stated the City's Human Resources Director, the City Clerk and the City Attorney were the negotiating team for this contract.

Councilmember Gomez announced that he would vote against this contract, stating the public safety contracts need to be settled first.

Motion: to adopt Resolution No. 7841 authorizing the new Memorandum of Understanding with the Milpitas Professional and Technical Group of employees covering the period July 1, 2008 through June 30, 2011

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

Motion carried by a vote of: AYES: 4
NOES: 1 (Gomez)

BID & CONTRACT

One item was approved on the consent calendar.

12. Debris Box with Pagnini's

This matter was removed from consent by Vice Mayor McHugh to accommodate the request of one person in the audience.

Speaker

Isaac Hughes asked about these contracts and how was it decided to be a three-year agreement.

Mayor Livengood asked the City Attorney to answer the speaker's question, who replied he would need to ask staff. Utility Engineer Kathleen Phalen responded it had been City practice to allow three-year options, and it was up to the City Council.

Mr. Hughes commented that 12% of gross receipts were paid by a hauler to the City, so it looked like an exclusive franchise agreement similar to Allied Waste and he termed it illegal kick-backs.

Motion: to approve a standard three-year agreement with Pagnini's Inc. for a debris box

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Livengood adjourned the City Council meeting at 9:11 PM, in memory of San Jose resident and activist May Ferraro.

The foregoing minutes were approved by the Milpitas City Council as submitted on March 17, 2009.

Mary Lavelle, City Clerk